

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

Caterpillar Inc.

Employer¹

and

Case 10-RC-15453

**United Steelworkers of America, AFL-
CIO/CLC**

Petitioner

**REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION**

The Employer, Caterpillar Inc., is located in Atlanta, Georgia where it is engaged in the distribution of parts. The Petitioner, United Steelworkers of America, AFL-CIO/CLC, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of “all production and maintenance employees employed at the Atlanta, GA facility, excluding all office/clerical employees, professional employees, guards and supervisors as defined by the Act.” On the record, Petitioner amended its unit description to specifically include team leaders. A hearing officer of the Board held a hearing and the parties filed briefs, which have been carefully considered, with me.²

¹ The Employer's name appears as amended at hearing.

² As requested by the Employer, I have taken official notice of a Decision and Direction of Election attached to the Employer's brief that was issued by the Regional Director of Region 12. This decision issued on May 3, 2002, in Caterpillar, Inc., Case 12-RC-8774. Additionally, I hereby grant the Employer's motion to file a corrected brief inserting the word “not” between “are” and “so” in the first sentence of the final paragraph of page 21 of the brief.

As evidenced by positions taken at the hearing and in their briefs, the parties disagree on the following two issues: (1) whether 7 clerical employees should be included in the unit and (2) whether 22 employees supplied by temporary agencies should be included in the unit.

The Employer contends that the clerical classifications at issue and the agency employees should be included in the unit. The Petitioner, contrary to the Employer, contends that these employees should be excluded. The unit sought by Petitioner includes about 44 employees, while the unit proposed by the Employer would include about 73 employees.

I have considered the evidence and arguments presented by the parties on each of these two issues. As discussed below, I have concluded that the clerical employees in question are warehouse clericals rather than office clerical employees and are therefore appropriately included in the unit. I have also concluded that since the agency employees work side by side with the warehouse employees sought by Petitioner and are employed for an indefinite term, they, too, are appropriately included. Accordingly, I have directed an election in a unit that consists of approximately 73 employees.

To provide a context for my discussion of these issues, I will first provide an overview of the Employer's operations. Then, I will present the facts and reasoning that supports each of my conclusions on the issues.

I. OVERVIEW OF OPERATIONS

The Employer's Atlanta, Georgia facility is a distribution center that warehouses and distributes Caterpillar parts to other Caterpillar locations, primarily dealers in Georgia and nearby southeastern states. The distribution center is approximately 220,000 square feet, most of which is devoted to receiving, warehousing and shipping parts of widely varying shapes and sizes. These areas are open. In one corner of the facility, there is an enclosed office area. The

work stations of the support and training staff are located in this office, although some of these clerical employees spend most of their time on the warehouse floor.

The present facility has been in existence since 2002 and is staffed by 44 regular full-time warehouse employees and 7 regular full-time clerical employees.³ Some of these employees in both the warehouse and clerical positions transferred from the former Atlanta distribution center or from a Caterpillar manufacturing center in Griffin, Georgia and receive higher “red circled” wages than the \$10.00 to \$13.89 pay range established for the new facility. Additionally, the Employer employs a fluctuating number of agency employees who are told that they may be eligible for permanent employment at the end of 30 days. At the time of the hearing, 22 such employees worked as warehouse employees, performing the same work and reporting to the same supervisors as the permanent warehouse employees.

All regular and agency warehouse employees report to one of five floor supervisors, who in turn report through two operations managers to the Facility Manager. The clerical employees whose status is at issue either report to the Safety/Training Supervisor or to the Support Staff Supervisor, both of whom report directly to the Facility Manager.

II. THE CLERICAL EMPLOYEES

Petitioner contends that the seven clerical employees at issue are office clericals properly excluded from the unit. The employer contends that they are plant or “warehouse” clericals normally included in a production and maintenance or warehouse unit. The specific classifications in question are the storeroom clerk, the two senior storeroom clerks, the three office administrative assistants (two on day shift and one on second) and the training coordinator.

³ There is no dispute concerning the exclusion of 12 supervisors or managers: Max Lathrop, Don Houser, Bob Farmer, Corey McNair, Rupal Patel, W. Donnie Long, Charlie Heren, Bill Hunt, Byron Green, Lori Jones, Bill Small and Larry Nelson.

All of these employees have work stations in a separate office area in one corner of the facility but, as will be more fully discussed below, most of them spend considerable time on the warehouse floor. They are hourly paid; receive the same benefits as warehouse employees (including the “grandfathering” and “red circling” of certain wages and benefits applicable to warehouse and clerical transferees alike); attend the same business meetings and social gatherings; and utilize the same facilities, including parking lot, restrooms and cafeteria. Educational requirements are the same for both warehouse and clerical employees, and both may participate in the same professional development program.

The same handbook and bidding procedures are applicable to clerical and warehouse employees. The storeroom clerk, one of the senior storeroom clerks, one of the administrative assistants and the training coordinator were all formerly warehouse employees. One Senior Storeroom clerk is a former supervisor and, before that, administrative assistant who transferred from the former Atlanta warehouse facility, while two of the administrative assistants are transferees from the Griffin manufacturing facility.

As described in the preceding section, the clericals are separately supervised from the warehouse employees. However, a review of their job duties shows that those duties are functionally integrated with the duties of the warehouse employees and are integral to operations of the distribution center. Moreover, most of these clerical employees have considerable day-to-day contact with warehouse employees. Thus, the storeroom clerk spends most of his day in the warehouse performing such functions as counting inventory, investigating reports from warehouse employees that items are not available, and performing random audits of material. In so doing, he uses the same “RF unit” (a handheld computer device) and “order picker” equipment as the warehouse employees. Similarly, the senior storeroom clerks are on the warehouse floor most of the day. Senior Storeroom Clerk Hollis Washington investigates claims

from customers relating to problems with filling their orders. In so doing, he utilizes order pickers and other equipment used by warehouse employees and talks with these employees. Additionally, on some Saturdays he picks, packs and ships emergency orders. Senior Storeroom clerk Barry Dillard and Training Coordinator Mary Willis spend most of their time on the warehouse floor training warehouse employees, including the agency employees, in all warehouse functions. In so doing, they utilize the same equipment as the warehouse employees. Dillard is also involved in calling in vehicles that are down or damaged so they can be repaired, and in ordering such supplies as pallets and cartons for warehouse employees.

The three office administrative assistants spend varying amounts of time on the warehouse floor. Donna Green spends the least time: probably less than half an hour a day or 10 per cent of her work time. As do the other administrative assistants, Felicia Barkley, Monica Britton (on second shift), and Green handle electronic or telephone orders, determine the best method of shipment and then release the orders to the storeroom to be filled. These employees may also receive telephone complaints from customers and, either pass them on to a senior storeroom clerk to investigate, or investigate the matter themselves. Barkley and Britton spend more time on the warehouse floor than Green since Barkley sometimes packs emergency orders and coordinates with the warehouse on getting it shipped, and Britton helps with the UPS packing.⁴

As the Board has stated, “the distinction between office clericals and plant clericals is not always clear.” Hamilton Halter Co., 270 NLRB 331 (1984). The test generally is whether the employee’s duties are related to the production process rather than general office operations, and the distinction is grounded in community-of-interest concepts. Cook Composites and Polymers

⁴ The record reflects that Britton spends more time and Barkley “a lot more” time in the warehouse than the half hour or less per day spent by Green, but more precise estimates are not given for these two individuals.

Co., 313 NLRB 1105 (1994). Here, the functional integration of the work of the clericals with the work of the warehouse employees; the frequent work contact of most of the clerical employees with the warehouse employees; the interchange of employees moving from warehouse to clerical positions; and the common benefits, facilities, bidding procedures, educational requirements and rules and policies all favor the conclusion that the seven employees at issue are plant clericals properly included in the unit. The foregoing factors militating in favor of inclusion outweigh the separate lines of supervision and the fact that the clericals' work stations are located in an enclosed office. In reaching this conclusion I rely particularly on the evidence that because of functional integration of the work, the clericals are an integral part of the warehouse operation, and on the evidence that most of the clericals spend a significant amount of time on the warehouse floor. Interstate Warehousing of Ohio, 333 NLRB 682 (2001); Columbia Textile Services, Inc. 293 NLRB 1034, 1037-1038 (1989).

Accordingly, I find that the seven clerical employees at issue here do not have a sufficient separate community of interest apart from the warehouse employees sought by Petitioner to warrant their exclusion from the unit. Rather, they share a strong community of interest with the warehouse employees. I shall, therefore, include them in the unit.

III. THE AGENCY EMPLOYEES

As described above, the present Atlanta distribution center opened in 2002 and was staffed with transferees as well as direct hires. Since the initial staffing, except for transfers from Griffin, all permanent Caterpillar employees have begun as "agency" employees supplied by four different agencies. These employees receive their paychecks from the agency. They begin at \$9.50 an hour but after 30 days go to \$10.00, the starting rate under the Caterpillar pay scale. They do not receive Caterpillar benefits.

Agency employees are hired for an indefinite term and are told only that they are eligible for hire as permanent employees of Caterpillar after 30 days. In some ways, the 30 days serves as a probationary period. Those whose attendance or productivity are not satisfactory are not retained. Depending on manpower needs, others may be retained as agency employees for an indefinite period or may be hired as permanent employees. Staffing needs fluctuate, and some may not be retained because of lack of need for their services. The number of agency employees has fluctuated from as low as 5 to 10 employees to as high as the 22 presently employed. In 2004, the number has averaged about 15. The longest tenured agency employee at the time of the hearing had been working at the distribution center for about four or five months. At least four employees named on the record have converted from agency employee status to permanent Caterpillar employees.

The agency employees are all “warehouse associates” and work side-by-side with permanent Caterpillar warehouse associates. They perform the same work, under the same supervision and using the same equipment. They also attend the same meetings and social gatherings, use the same facilities and are eligible for overtime.

The test for determining the eligibility of individuals designated as temporary employees is whether they have an uncertain tenure. If their tenure is indefinite and they are otherwise eligible, they are permitted to vote. MJM Studios of New York, Inc., 336 NLRB 1255 (2001); United States Aluminum Corp., 305 NLRB 719 (1991); Lloyd A. Fry Roofing Co., 121 NLRB 1433 (1958); Personal Products Corp., 114 NLRB 959 (1955). Here, there is no definite term of employment and agency employee status may be a path to permanent employment. Moreover, it is clear that these employees are “otherwise eligible” and share a community of interest with the regular warehouse employees based upon their common job duties, equipment, supervision, and utilization of the Employer’s facilities. Interstate Warehousing of Ohio, 333 NLRB 682 (2001).

Accordingly, I find that the agency employees work for indefinite terms and share a community of interest with the warehouse employees sought by Petitioner. I shall, therefore, include them in the unit.

IV. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All production, maintenance and warehouse employees employed by the Employer at its Atlanta, Georgia distribution center, including all full-time and regular part-time agency employees, storeroom clerks, senior storeroom clerks, office administrative assistants, training coordinators and team leaders, EXCLUDING office clerical employees, professional employees, guards and supervisors as defined in the Act.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Steelworkers of

American, AFL-CIO/CLC. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who are employed by the Employer during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized. Upon receipt of the list, I shall make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Suite 1000, Harris Tower, 233 Peachtree Street, N.E., Atlanta, Georgia 30303, on or before May 24, 2004. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (404) 331-2858. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and regulations, the Employer must post the Notices to Election provide by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received

copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, DC 20570-0001. This request must be received by the Board in Washington by 5:00 p.m. (EDT) on June 2, 2004. The request may **not** be filed by facsimile.

Dated at Atlanta, Georgia, this 17th day of May, 2004.

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